in her will of a portion of the trust fund; that the original contestant was one of the beneficiaries affected by her exercise of her power of appointment. She had no other interest in the estate. That originally the Commonwealth did not appear. The Commonwealth subsequently came into the picture because it appeared Mrs. Hurst had no other relatives who would inherit except by virtue of her will.

The record raises no question as to her mentality or her ability to make a will; in fact, the testimony clearly shows that her regular family physician who saw her the day before she made the will and also the day after testified she was competent to do so.

The record shows that after her son's death she carefully investigated what she owned and what she did inherit to determine what she would have and what she would have to live on; that she made three trips by suburban transportation from her home to the appellant's city office in connection with her affairs and the preparation of the will. She knew exactly what she had; she knew she had no immediate relatives; she knew whom she wished to benefit. She decided what she wanted done. The will was prepared in her presence and in the presence of two disinterested witnesses. She went over the will and found it to be what she wished and so declared it and signed the will in the presence of the witnesses, who, in her presence and in the presence of each other, signed their names as witnesses. There was not one bit of evidence of any undue influence on the part of appellant. There was no evidence that he asked her to leave him anything. She decided what she wanted done and said she was going to live many years and spend as much as she could.

Appellant, a lawyer, had represented her in any legal matters she had. Her deceased son was an accountant and had appellant assist him in many matters. Appellant had represented her son for many years and their contacts were numerous. He had made a will and in his will that

was duly proven appellant was named as trustee for her trust fund for life. She knew this and he had always told her that if while he was away on his accounting travels she wanted anyone to help she should call appellant.

She had a maid who had been a housekeeper for them many years. The housekeeper lived in with her twenty-four hours a day. She ran the home and she was one of the beneficiaries named by his decedent.

She was very close to her doctor, who saw her frequently and was the doctor also for the son and saw him frequently. He saw her the day before and the day after the will was made. She left him $5,000.00.

Then as to the balance she said she had no one else but appellant; that he would have to look after her the rest of her life and she left it to him.

When asked whom she wished to name as executor, she said appellant, as he would have to look after her and her affairs and know all about them.

The evidence clearly shows the will was only made after careful investigation by the decedent of her assets and what she had to dispose of. That she had gone over the same not only with the appellant but with a public accountant, Horace S. Rhoads, what she would probably require to live on.

The will was made December 2, 1949. She did not die until January 18, 1958. During that time appellant and his office force carefully looked after her and her needs and comforts. She had broken her hip on December 12, 1949. The break did not properly heal. She therefore from then on required assistance if she wished to get up or there was danger of her breaking it again. She always wished to return to her home, to which she was devoted. The house therefore remained unsold for many years. No expense was spared in her care or comfort.

The evidence clearly shows that the will was what she wished; that she had eight (8) years to change it if she wished; that she came to appellant's office three or four

times by public transportation in reference to her affairs before she made it; she declared in the presence of two independent witnesses that the will was what she desired. There is no evidence that the appellant did otherwise than ask her what she wished to do. She had answered and advised him. She read the will carefully after it was made and in the presence of two witnesses declared it to be what she wished. She executed the will in accordance with law, which she had a constitutional right to do.

The decedent's son in his will left her his house. She very promptly advised that she had owned the house for years and the house didn't belong to him. This was never denied and remains as undisputed and irrefutable evidence that Testatrix, at the very time she made her Will, possessed a resolute mind that could never have been "unduly influenced" by anyone, including the petitioner, Alker, and hence the prejudicial errors of the Pennsylvania Courts below which violate due process and equal protection to your petitioner.

Petitioner respectfully submits that the Court should therefore give him a hearing in this matter and after said hearing return the case to the Court below for further hearing before the Orphans' Court of Montgomery County, Pennsylvania.

Respectfully submitted,

JAMES J. REGAN, JR.,
115 Edgehill Road,
Bala-Cynwyd, Pa.,
Attorney for the Petitioner.

HARRY J. ALKER, JR., *Petitioner,*
1505 Land Title Building,
Philadelphia 10, Pa.

MOTION FILED MAR 15 1963

IN THE

Supreme Court of the United States

October Term, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED

Harry J. Alker, Jr., Petitioner,

PETITION FOR LEAVE TO FILE THIRD PETITION FOR REHEARING AND THIRD PETITION FOR REHEARING.

JAMES J. REGAN, JR.,
1505 Land Title Bldg.,
Philadelphia 10, Pa.,
Attorney for the Petitioner.

International, 711 So. 50th St., Phila. 43, Pa.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

PETITION FOR LEAVE TO FILE THIRD PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Harry J. Alker, Jr., respectfully prays leave of this Court to file a third petition for the issuance of a writ of certiorari for review of the decision of the Supreme Court of Pennsylvania in the above entitled case.

The petition for issuance of writ of certiorari was filed on July 16, 1962. A brief was filed by respondents. A reply brief was filed by petitioner on October 12, 1962. Certiorari was refused on October 16, 1962.

A petition for rehearing was filed on November 5, 1962, which was denied by this Honorable Court on December 3, 1962.

A second petition for rehearing was filed on December 28, 1962 which was denied by this Honorable Court on February 18, 1963. Your petitioner, in his course of pleadings, brought out the facts (1) that the Supreme Court of Pennsylvania, in its opinion, found that this petitioner knew the deceased, Annie E. Hurst, for only four weeks before her will was prepared by him and executed by her; (2) that, contrary to this finding, there is evidence in the

record of the case that petitioner, Harry J. Alker, Jr., and Mrs. Hurst were close friends as testified to by one of the attesting witnesses; (3) that she had seen Mrs. Hurst visit Mr. Alker in his office in 1948, (4) that Mr. Alker had been the Hurst family lawyer, having been in the estate of Mrs. Hurst's son Winfred, also having represented the decedent in the administration of her sister Mrs. Gerstlauer's estate in which Mrs. Hurst was the sole beneficiary, and that Mr. Alker had represented her said sister in several cases before her death in which decedent was also interested.

Your petitioner believes that this is a vital issue in the case containing a Federal constitutional question which, if heard at an Orphans' Court hearing the Hearing Judge may very well induce him at the time to find in Mr. Alker's favor that there was a long relationship between decedent and petitioner, and that no undue influence was exercised by him in the making of her will.

Also, this Honorable Court's attention is called to the facts previously shown to it, that Mrs. Butler, the owner and operator of the Nursing Home where Mrs. Hurst was taken after her accident, and one of the employees there testified as to the good mental capacity of decedent shortly after the making of her will.

Petitioner contends that to allow the Court's findings to stand as they are is a great injustice to the petitioner and decedent, and a violation of their constitutional rights to due process and equal protection of the law.

Petitioner believes that he has substantial grounds to present (not previously presented) in that at a new hearing he would call Joseph Panosetti, the State of Pennsylvania Escheat Department investigator, to elicit evidence as to the influencing by him of decedent's neighbor witnesses in their testimony of Mrs. Hurst's mental and physical condition. As shown before, this man has been discredited and has pleaded guilty to and been convicted of charges of perjury and subornation of perjury and is now serving a prison sentence in the Philadelphia County Prison.

Your petitioner, therefore, has prepared a Third Petition for Rehearing of his petition for certiorari and begs leave of this Honorable Court to file the same.

Petitioner hereby certifies that this petition is not filed for purposes of delay, but in good faith, for the reasons herein specified.

Respectfully submitted:

HARRY J. ALKER, JR.,
Harry J. Alker, Jr.,
Petitioner.

JAMES J. REGAN, JR.,
Attorney for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

ORDER.

AND NOW, , 1963, leave is granted the petitioner to file a third petition for rehearing of the petitioner's petition for the issuance of a writ of certiorari to review the decision of the Supreme Court of Pennsylvania in the above entitled case.

By THE COURT,

J.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 256.

ESTATE OF ANNIE E. HURST, DECEASED.

THIRD PETITION FOR REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Harry J. Alker, Jr., again prays that this Court rehear and reconsider its denial of his petition for the issuance of a writ of certiorari to review the decision of the Supreme Court of Pennsylvania in the above matter.

Your petitioner filed a petition for issuance of a writ of certiorari on July 16, 1962. It was refused on October 15, 1962.

A petition for rehearing was filed on November 5, 1962, which was denied by this Honorable Court on December 3, 1962. A second petition for rehearing was filed and later denied by the Court.

The matter here is one involving equity and justice and the constitutional questions of due process and equal protection under the law. Your petitioner firmly believes there has been a gross misapplication in this present case by the Trial and Appellate Courts sitting herein and further believes and feels that a grave inequity has been done to him.

The refusal of the certiorari in this case leaves the petitioner devoid of property that should rightfully come to